

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, OCTOBER 20, 2005
TIME: 9:00AM
PLACE: KONA OUTDOOR CIRCLE EDUCATIONAL CENTER
76-6280 Kuakini Highway
Kailua-Kona, HI 96740

Attendance:

HIBC Members: Ron Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Pele Hanoa, Ka'u
Roger Harris
Roy Helbush
Ku Kahakalau, Hamakua
Ulu Sherlock, Hilo
Kaleo Kualii'i, Kona
Cynthia Nazara, Kona
Dutchie Saffrey, Puna
Charles Young

Absent: Anna Cariaga, Ka'u
Jacqui Hoover

SHPD Staff: Keola Lindsey, Burial Sites Program
Maryanne Maigret, Hawai'i Island Assistant Archaeologist
Vince Kanemoto, Deputy Attorney General

Guests:	Jiro Sumada	Halealoha Ayau
	Dave Tuggle	Curtis Tyler
	Joanne Kahanamoku-Sterling	Angel Pilago
	Barry Muronaka	U'i Pauole
	Lizabeth Hauanio	Maile David
	Arthur Mahi	La'akea Suganuma
	Isaac Harp	Ruby McDonald
	Byron Moku	Sally Agpar
	Iwalani Arakaki	Maria Orr
	Puanani Corrilio	George Kahananui

**Jim Greenwell
Angel Pilago**

I. OPENING REMARKS

The Hawai'i Island Burial Council (HIBC) Chairman Charlie Young (Young) calls the meeting to order at 921a.

Pele Hanoa (Hanoa) offers a pule.

Introduction of HIBC Members, State Historic Preservation Division (SHPD) staff and the Deputy Attorney General

II. APPROVAL OF THE SEPTEMBER 15, 2005 HIBC MEETING MINUTES

A motion is made to accept the September 15, 2005 HIBC Meeting Minutes (Elarionoff/Saffrey)

Vote: All in Favor

III. BUSINESS

A. BURIAL TREATMENT PLAN FOR AN AREA IN THE AHUPUA'A OF HONOKOHAU I (NUI) AND II (IKI), KONA DISTRICT, ISLAND OF HAWAI'I

[TMK (3) 7-4-008:013, (3) 7-4-008:030 AND (3) 7-4-008:074]

Information/Determination/Recommendation: Presentation by West Hawai'i Business Park, LLC. Council determination to preserve in place or relocate previously identified burials. Council recommendations to the Department on the short and long term preservation measures detailed in the Burial Treatment Plan. Recognition of lineal and/or cultural descendants.

Keola Lindsey (Lindsey) reads a memorandum dated 10/13/05 recommending that the HIBC recognize the following individuals as cultural descendants for the purposes of protecting unidentified ancestral Native Hawaiian remains located within the subject TMK parcels:

1. 'Iwalani Arakaki
2. Janet O. Nenio
3. Karen Lilinoe
4. Puanani Corilio

A motion is made to accept the staff recommendation to recognize the individuals as cultural descendants (Elarionoff/Saffrey)

Vote: All in Favor

Young says the HIBC will be making a determination on preservation in place or relocation of the burials. The burial treatment plan from the applicant proposes preservation in place. There will also be discussion on the proposed Kamanu Street alignment.

Young would like to first have discussions to address the issue of preservation in place- that is a vote the HIBC needs to make today. Young would like to open up that discussion with the applicant, the HIBC members, and the descendants.

A motion is made to preserve in place the burials within sites 18088, 18116, 18117, 18134 and 18197 (Elarionoff/Harris)

Ku Kahakalau (Kahakalau) says she thought there was going to be discussion with the descendants first.

Young says he is, but did not see anyone who wanted to comment on the preservation in place issue.

Isaac Harp (Harp) says he has been discussing the matter with most of the descendants, and the consensus seems to be to support preserving the burials in place

Young says it is his understanding that the descendants agree to preservation in place.

Vote: All in Favor

Young says there are some concerns on the Kamanu Street alignment and buffer zones around the sites. These need further discussions. The HIBC had some discussions and made recommendations to the applicant at previous meetings.

Jim Greenwell (Greenwell) says he is the President of West Hawai'i Business Park, LLC and Lanihau Properties, LLC which is a family LLC. Speaking on these issues requires him to wear both hats.

Greenwell would like to say a few words up front that he feels are important to share in terms of what has been going through his mind since we met on September 15th, and some of what has been going through his mind through this entire process.

Greenwell apologizes for reading from his notes, but he wanted to make sure he said it correctly since this is important to all of us and he only gets one chance to say it.

Following last month's meeting, he was left with several unresolved issues that required further study and thought on his part. In preparing a response, they have tried to honor two basic principles- honor and balance. We are dealing here with a variety of opinions that are honestly and sometimes even passionately expressed. We all know that these opinions are not all always in agreement, yet we are all seeking a resolution of these differences in a manner we can live with. Greenwell is learning how that is not always easy. As to respect, Greenwell feels respect means that the opinions of all who have

come forward and participated in this process...Greenwell respects those opinions even though he recognizes that there may be differences, it is not always with one voice we hear them and Greenwell assures everyone he does not take this personally if those opinions are different from his own. He respects that. Greenwell respects what he has learned from this process and what they have learned about this land and the culture of which the land is a part. Greenwell is reminded that the common bond that brings us together is this place, the land of Honokohau.

In particular, they respect the opinions of the descendants and acknowledge that some of them have been working on this for the last five years. The descendant list has grown as the process has moved forward. Greenwell has always tried to be inclusive as this list has expanded. The descendants input is important, and Greenwell appreciates their time and effort to guide them. Greenwell has placed a lot of weight in those opinions, and have deferred to the descendant group on many issues which he respects as the descendants kuleana to resolve.

Greenwell respects the process we have all been given to work within and that process has brought us all together today, believing we are all trying our best to make it work as best we can.

The word balance is really important to them which basically means trying to weigh the pros and cons and the different sides of an issue. Greenwell would like to acknowledge certainly for himself, that he is not just here today representing himself- all of us here represent more than just ourselves. Greenwell represents a family, a group of owners and opinions that differ from his own to some degree. Greenwell always wonders how he balances all this, how does he try and speak with one voice. As a family, they met on September 22nd- a week after last month's HIBC meeting, to discuss among other things how this was proceeding and the issues that were still before them. What Greenwell will say is a balanced response reflecting his family's opinion.

Balance also means to him that you give where you can, but you also have to be prepared to hold firm to what you honestly believe is right and appropriate and adequate. Some of this takes a long time, and they have been at this for quite awhile. Balance also gets into the issue of time and it means trying to give all the time that may be needed to find the right solution but trying to balance that at some point with the need to bring closure to these issues and move on. They are trying to find a balance between customs, practices and truths of the past and balance those against an environment we find ourselves in today with it's own sets of constraints and laws and common practices which gets us into things like we will today, public road standards.

How do we balance all of this. Greenwell feels they have tried their best to find that balance and have tried to reflect that in what they have presented.

There were four outstanding issues that stood out in Greenwell's mind after September HIBC meeting.

The first was subject to a closed session at the September HIBC meeting and has to do with some concerns Ruby McDonald expressed, which Greenwell will not go into specifics on, but would like to acknowledge and appreciates McDonald coming up to him after that

closed session and telling him there were some things they needed to talk about- they agreed there was no time like the present and went outside and went through it while it was fresh in their minds and talked for about 20 or 30 minutes. Greenwell believes he understands McDonald's concerns and was thinking out loud as he was hearing them. Greenwell also thinks McDonald understood his position which is basically that Greenwell feels the concerns she brought to him were concerns that were more appropriately addressed by the descendant group, and not his call.

Greenwell spoke with McDonald again this morning and felt that he should at least mention this so the HIBC understands this dialogue has happened. Greenwell just wanted to clarify the timeframe when this happened and what was said.

The second issue has to do with Site 18134 which is the site that straddles the property line on the mauka boundary of the project. The HIBC has received a memorandum from Greenwell dated October 7th. If you compare the new figure G-3 (in the memorandum) and the old figure G-3 (in the treatment plan) you will see that they have expanded the burial preservation buffer zone and the fenced protected area near the entry to the cave. Greenwell has discussed this issue in depth with his family, which is Lanihau Properties, LLC, the landowner of the parcel mauka of the project. They have agreed as expressed in the October 7th memorandum to treat the entire site as if it were within the burial treatment plan.

Exactly how they best do that, whether it is an amendment or covered in the plan or whether it is a separate binding agreement that runs with the land is something they need to explore and work out in the process of finalizing this. The issue was to not separate the site and to respect the same protections for the entire site as though it was within the project area.

The third item had to do with how they were measuring the burial preservation buffer zones with respect to the location of the iwi. The approach they have taken throughout has been to consider this question on a site by site basis. Greenwell has not modified the burial treatment plan from what was submitted in September, but wanted to note a few things for each site.

They were basically starting with the description of the burial chamber and then looking to a burial preservation buffer that was at least 20 feet from the edge of that chamber and at least 30 feet from the burial. They later changed the 20 to 25 feet prior to drafting the report at the request of the descendants. As they looked at each site, they are comfortable that they have provided as best they can the sort of protection which Greenwell believes was desired by the descendant group.

For Site 18088, it was pointed out that with the building setback they had almost covered and protected the entire site to be sure there would be no buildings on any of the cave. They are prepared and acknowledge in the memo that in the final plan move the building setback to include those portions of the cave. For that site it works, they are willing to do that, they have that flexibility.

For Sites 18116 and 18117, they have set aside a cultural preservation area of nearly four acres. They believe that coupled with the method of defining the burial chamber and

establishing the burial preservation buffers fully protects the caves from building. Greenwell asks that we defer on the Kamanu Street connection for now because that is the last issue he will address separately.

For Site 18134, Greenwell believes the concerns for that particular cave have been addressed as requested.

For the last site we have not talked a lot about, on the edge of the 'a' flow (18197), the manner in which the chamber is defined and the surrounding buffers described protect it fully from any kind of building activity on top of the cave.

The last issue deals with the Kamanu Street alignment. They needed to look harder to find an alternate alignment that would take the footprint of the road totally clear of the mauka tip of the lava tube (Site 18116). Greenwell wanted to acknowledge that the actual burial is 130 feet makai of the edge of the road right of way.

Greenwell would like the project engineers to address the process they went through. Greenwell has also invited Jiro Sumada, Deputy Chief Engineer from the County to be here today to explain what has happened in the last 30 days.

Also with Greenwell today is Maria Orr, who has helped with contacts with the descendant group, Isaac Harp, who is the project cultural monitor and has helped with the contacts with the descendant group, and David Tuggle the project archeologist, and Barry Muronaka of Akinaka and Associates the project's civil engineer.

Young says the first three points Greenwell made seem pretty friendly and in many ways are actually concessions to some of the recommendations the HIBC made. Young would like to go to the road alignment, which Young feels brought the most concerns from people who were at the site visit and HIBC meeting last month.

Young asks Greenwell if he has a lot of engineering detail on the road alignment to present.

Greenwell says it depends on the level of discussion the HIBC wants to get into. There is a lot of detail involved in the process, but would like the County to get into that. Greenwell's approach on this has been a recognition that ultimately he has to satisfy the concerns the County has on the design of a public road. They had those discussions privately and can summarize them, but how much detail they get into depends on the pleasure of the Council. The best way to get into it would be to allow the project's civil engineer, Barry Muronaka who was charged with going back in to find alternative alignments, to describe the process he went through and the criteria he was trying to design against. Perhaps Muronaka and Sumada can comment on where those discussions led them.

Young says it will address the HIBC's concern of looking at alternatives to the alignment that was illustrated in the burial treatment plan- the Council would like to see what alternatives were looked at.

Greenwell says that is fine. He mentioned balance before- He realizes probably more than any other issue here, this question of balance and trying to weigh everything and come up with an acceptable, livable solution probably applied more to this discussion than any other. Greenwell asks the Council to keep that in mind.

Barry Muronaka (Muronaka) introduces himself to the Council- he is the civil engineer for the West Hawai'i Business Park project. Since the last meeting, he was charged with finding more alternatives to see if there were ways to get above (mauka) the lava tubes.

There are eight different criteria for designing roads that they are trying to meet. Muronaka tried use alternative #1 from the BTP by basically moving the Kanalani intersection more south. He was able to eliminate the "S" curve, but other criteria were not resolved. Any other alternatives he came up with did not resolve the criteria. Muronaka did submit the alternatives to the County, and they did review them.

Jiro Sumada (Sumada) introduces himself to the Council. He is the Deputy Director for the Hawai'i County Department of Public Works. Their mission is providing roads that are safe and efficient. There are major development plans for this area in the future which will introduce a lot of traffic. They reviewed the alternatives Muronaka submitted and basically rejected all of them mainly because of the sight distance issue but there were other safety issues. There is talk of the future West Hawai'i Civic Center and a new Hospital being located off of Kealahou Parkway. According to the Planning Director, Hawaiian Homes alone will have 2000 homes in the Villages of La'iopua. The hub of Kona may be shifting north from Kailua and the County is anticipating traffic.

Sumada says people call him to express their concerns about limited alternative routes and connector roads. They are trying to make the roadway network as safe as possible. Sumada says they did look at all the alternatives- Muronaka was very creative.

Muronaka says the original alignment they proposed does not have the sight distance problem.

Young says basically the alternatives don't meet the criteria.

Muronaka agrees, the National Standards.

Dutchie Saffrey says there has been talk of bridges over the tube.

Muronaka says it is not an above ground bridge- it is a road that is reinforced more.

Roger Harris (Harris) asks Muronaka if he feels structurally confident.

Muronaka says they are. They can build an at grade bridge section to span the tube in this area.

Muronaka says we are quite a distance away from the burial chamber- about 130 feet.

Elarionoff says regarding the concerns about vibrations impacting the cave, is there a way to have the vibrations go down into the foundation and not affect the cave.

Muronaka says their geologist will take a look, but the main goal is design the road to avoid having the loads transferred down. It is part of the study.

Elarionoff says he is not concerned about the road going over the cave. If the road went over the burials themselves, he would be opposed to it. Sometimes trails go over caves- the old folks respected the burials themselves, but over the extensions of the caves, we are probably putting more significance than they did. Elarionoff says he knows of some caves that go for three miles- others have told him of caves that go on for nine miles. The fact that the old folks had trails go over the caves in general but not the burials themselves gives us some idea of how they felt.

Ron Dela Cruz says he knows of other trails that cross over burials. The trail was at a later date than some of those burials.

Muronaka says the cave we are talking about is not shallow- it is 15 to 20 feet deep.

Elarionoff asks if that is 15 to 20 feet from the top of the cave to the surface of the earth.

Muronaka agrees.

George Kahananui (Kahananui) says we need to protect what we can, if not it is going to kick back on us- we can't let that happen. He has learned a lot from the past. A cave is a cave- how much is going to hold. Today we have big equipment going on the cave- is it going to hold, is it going to collapse.

Young says the proposal is to go over one of the burial caves with a road.

Kahananui says we need to go over that area for protection- we don't know if it is going to hold. We don't want anything coming back on the kupuna- we didn't do enough or we didn't do anything. If we go around there is no kick back.

Arthur Mahi (Mahi) says the road should be re-routed, they don't want the road going over the cave because in the future it may cave in and we will have a problem. The iwi should be left in place and the caves should be sealed up. Everything that is there should stay there in place especially the artifacts.

Maria Orr (Orr) says we all know that lava tube systems are complex- in this case there are fingers to the tube. The finger that the road is proposed to cross over is not the finger of the tube with the burial.

Orr says she got a call from Analu Josephides this morning and he wanted Orr to say some thing for him- he does not have a formal position on the road at this time. His only concern was that the iwi were protected.

Elarionoff asks if the portion of the tube the road crosses collapses in due time, the burial chamber is still preserved.

Orr agrees.

Young asks if this bridge concept has been used anywhere else.

Muronaka says he believes it has, but does not have a specific location.

Elarionoff asks if bridges span distances like the Golden Gate Bridge are basically the same principle.

Muronaka agrees but in this case it would be at grade

Junior Kanuha (Kanuha) requests a closed meeting.

Vince Kanemoto (Kanemoto) says only to discuss the description and location of a burial site.

Young asks Kanuha if this is to discuss the description or location of a burial site.

Kanuha says he asked for a closed meeting last time and did not get it. He is asking again.

Kanemoto says the meeting can be closed and the Council can take testimony on the description and location of a burial site, and the meeting can be opened again.

Kanuha says this meeting is about what the descendants want to do. We are going in circles here. The agenda is to see if this is going through.

Young says the Council voted to preserve all the known burials in place. Now it is the road issue and it is the descendants turn to provide comment to the Council but that has to be done in an open session.

Kanemoto says the Council has the statutory authority to close the meeting if it involves the description and location of a burial site.

Young says the Council will take other testimony first.

Isaac Harp (Harp) thanks the Council for addressing this issue. Harp would be lying if he said bridging the cave was his preferred alternative. Harp was really hoping the County would accept one of the alternatives. Even if the cave is 20 feet below the ground, Harp feels there will still be an impact from vibrations. If it is a situation where the road needs to cross the cave, Harp wants to make sure the structural integrity of the bridged section meets the expectations of the descendants. All of the descendants Harp have spoken to favor going around the cave if possible, but if forced into a situation where the cave needs to be crossed, they would support the bridge alternative.

Saffrey asks Harp if he is comfortable with the 130 foot distance from the road to the burial chamber.

Harp says he is comfortable with the protection of the burial itself, but not about the road going over the cave. Most of the descendants see the entire cave as a burial cave. Harp

says Greenwell has tried his best to satisfy the descendants concerns. This issue is in the hands of the County right now.

Cynthia Nazara (Nazara) asks Harp that after looking at all the engineering and designing, the mana'o was to come up with the bridge idea.

Harp agrees.

Nazara asks Harp if he feels all alternatives have been exhausted.

Harp says unless one of the five alternatives to crossing the cave is accepted by the County. Nobody is really happy with going directly over the cave, but right now we are stuck unless the County accepts one of the alternatives.

Saffrey asks Harp if the descendants agreed that if the County did not accept the alternatives, the descendants were comfortable with the bridge.

Harp agrees.

Hanoa says we are going to face a lot of caves in Kona. Are we going to keep building over them. We have to find a way to go around them- it is tough.

Harp asks Sumada if it is possible to reduce the speed limit on the road to 15 mph to allow one of the alternatives to be accepted.

Sumada says it is possible, but the reality of it is that nobody drives like that and because the County knows that nobody drives like that, we get into situation where it is an unsafe situation that the County knows about and approved.

Ulu Sherlock (Sherlock) asks if speed bumps would help.

Sumada says there are situations where speed bumps can be used and cannot be used- you don't want to use them on a curve or a downhill, but does not know how it will apply in this situation.

The engineer for the project proposed several alternatives- the County looked at them balancing their requirements for safety and efficiency and based on what they looked at, the County did not feel those were good solutions. We are trying to connect between two existing roadways with a slope and all the requirements- it is tough.

Elarionoff says he would not support the idea of speed bumps because it would increase the potential for vibrations- perhaps we should look at setting a weight limit for vehicles using this road.

Saffrey asks how long the HIBC has to make a recommendation on this issue- is the Council within the 45 day time period.

Young says the Council has 90 days to make a recommendation. We need to get the information.

Kanemoto says the Department has 90 days to approve a final preservation plan.

Elarionoff asks Greenwell if setting a vehicle limit for the road poses a problem.

Greenwell says he is not sure how you would enforce that- we are trying to avoid having to post a police officer there.

The construction of Kamanu street was required by the County before Greenwell can use the zoning- that is what they are waiting on. The County felt strongly about this road not because it was a project driven need, but because of the regional traffic demands. Greenwell is also responsible for designing the road- they can't begin designing the road until they know what line this road is going to take.

Kahakalau feels the Council can make recommendations on everything but the Kamanu Street issue- hopefully they can take one more look at some alternatives for that alignment.

Lindsey says the Council can make recommendations on whatever they feel they have enough information on. For the Kamanu street issue, if the Council needs more information, they can request that- the Department has 90 days from the date of the HIBC's determination to approve the plan.

Kahakalau can see the dilemma here, but she also sees the possibility of setting a precedent. Kahakalau is uncomfortable with this (Kamanu Street), and she is hearing that others are as well- the hope is that everyone working together and taking one more look, an alternative alignment can be identified that doesn't cross over the cave.

Saffrey asks Harp how the descendant group is feeling about this- at the Na'alehu meeting it seemed some descendants had some ideas, but now that some of the alternatives are not going to work what is the feeling now.

Harp says he wants to make it clear that at the Na'alehu meeting he was only representing a group of about 12 descendants- at that point in time they felt they were stuck with the proposal to go over the tube. There have not been any group meetings since that time.

Greenwell says he would be willing to call a meeting where the descendants can come. It would be like a workshop where the ideas can be discussed with the engineers as we work to finalize the plan.

Young encourages Greenwell to communicate all he can with the descendants. Young is not hearing any support for the proposed alignment- it sounds like if an alternative was identified the descendants would jump on it.

Harp says there have been alternatives presented, and he was willing to accept them, but the County has rejected all the alternatives.

Keolalani Hanoa (Hanoa) says it is not the descendants of the HIBCs responsibility to do the County's job. Our responsibility is to protect our kupuna iwi. The whole ana is the burial- Hanoa knows that for a fact.

A motion is made to close the HIBC meeting to discuss the description and location of a burial site. (Sherlock/Saffrey)

Vote All in Favor

A HIBC closed session begins at 1121a

The meeting is opened at 1152a

Ruby McDonald (McDonald) says she initially applied to be the steward of a site on the property- not a cultural descendant.

McDonald is asking that an internal mapping of site 18134 be conducted recording the positions of items and burials within the cave. McDonald is also asking that an inventory of items still in the cave and those removed from it be conducted. McDonald is asking that site 18134 be sealed permanently- if any one needs to see what the site looked like, photos should be taken. McDonald is also asking for clarification on the TMK numbers relative to the individual burial sites.

Kahakalau asks McDonald if she is agreeable to the revisions proposed to the BTP via the October 7, 2005 memo from Greenwell to the Council. The buffers have been expanded to include the entire site.

McDonald says it is ok that the buffers have been expanded, but some things are still up for discussion among the descendants.

Kahakalau asks McDonald about the Kamanu street alignment.

McDonald says she has no comment on that at this time.

Harp requests that the genealogy McDonald is basing her lineal descent claim to caretakers of this cave been provided to the larger descendant group for review. Harp would like evidence of the individual McDonald is claiming was the caretaker of this burial site.

McDonald says she reserves the right to keep her genealogy confidential- she has only authorized the HIBC to review it.

Kahakalau asks Harp if the descendants are comfortable with the revisions proposed in the October 7th memo, with the exception of the Kamanu Street connection.

Harp says with the exception of the Kamanu Street extension, the majority of the descendants are comfortable with it.

Kahakalau says Greenwell did a good job in addressing the concerns raised at the last meeting relative to expanding the buffer zones to make sure the entire caves are included in the protected areas.

A motion is made to accept the proposed revisions to the burial treatment plan detailed in the October 7, 2005 memorandum from James Greenwell to the HIBC with the exclusion of the Kamanu Street connection issue. (Kahakalau/Saffrey)

Vote: All in Favor

A motion is made to close agenda item III A. (Kahakalau/Sherlock)

Vote: All in Favor

Young says after lunch, the Council will go into executive session before agenda item B.

The HIBC breaks for lunch at 1207p.

The meeting is called back to order at 115p.

A motion is made to go into executive session. (Kahakalau/Harris)

Vote: All in Favor

Executive Session begins at 116p.

The meeting is opened again at 150p.

B. INTERVENTION IN NA LEI ALI'I KAWANANAKOA ET AL. V. BISHOP MUSEUM ET AL., CIV. NO. CV05-00540 DAE/KSC, LAWSUIT SEEKING RE-OPENING OF THE REPATRIATION PROCESS UNDER THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT AND REMOVAL OF 83 MOEPU LOCATED AT THE KAWAIHAE CAVES, HAWAI'I ISLAND

Information/Recommendation: Presentation by Hui Malama I Na Kupuna O Hawai'i Nei. Council to vote whether to intervene in the above mentioned lawsuit as one of the 13 co-title holders of the moepu. Council recommendation on intervention.

U'i Pauole (Pauole) introduces herself to the HIBC. She is with the Native Hawaiian Legal Corporation (NHLC) which represents Hui Malama. Now that the Council has taken the position that the items and the cave should not be disturbed, NHLC is asking the Council to intervene in the case in order to protect the Council's rights as one of the owners of the moepu.

Young would like a definition of intervention.

Pauole says only two of the thirteen claimants are involved in the lawsuit. NHLC asked the court to include the other eleven claimants in the lawsuit- if the court does not order that, the HIBC can ask the court to intervene, which means to participate in the lawsuit.

Kanemoto says when you intervene in a lawsuit, you have to seek permission from the court to intervene, which is based on your standing in the NAGPRA process. When you intervene you are becoming a party in the lawsuit on one of the sides if the Court grants the intervention.

Young asks who would represent the Council.

Kanemoto says someone in his office would make that decision at a higher level than him.

Hanoa says those moepu were placed in there with those iwi- what right do people have to take those items out.

Dela Cruz says he is hearing that the debate is whether repatriation occurred or if there is this idea of the loan. Some say not all of these items are moepu- some most certainly are, but some items may have been placed in this cave for safekeeping at the time of the breaking of the kapu system.

Hanoa says in the first place those items were stolen. Forbes had no business going in there and taking those items- Bishop Museum had no business buying items that were stolen from the Hawaiian people.

Kanemoto says the issue is whether the loan is still in effect or if repatriation is complete.

Halealoha Ayau (Ayau) says it sounds like the Council has its own views and perspectives on the issue. The most effective way for the Council to conveying those perspectives is to intervene. The Council does not have to agree with Hui Malama, but get involved and defend the Council's position.

Pauole says Bishop Museum feels that repatriation has been completed. The lawsuit seeks to challenge that position, by claiming it is incomplete.

Kanemoto says the HIBC is a claimant in the process. If the Court says repatriation is complete, then it is a moot point. If the Court comes out and says repatriation is not complete, and the process must continue, the HIBC is still a claimant.

Harris says this has always been a complicated issue, the HIBC started involvement as one of many claimants under the NAGPRA process. We need to hear from the other people.

Saffrey asks if this decision to intervene means it happens now.

Kanemoto says intervention means the Council becomes a party in the lawsuit. It appears that Hui Malama is enlisting the HIBC's support to intervene on their side of the lawsuit.

Young asks how the Council states its position that the items be left undisturbed.

Kanemoto says by making a motion stating just that- the items should remain in the cave undisturbed.

Paule says the HIBC does have an interest because the removal of the moepu is what the lawsuit is seeking. If the HIBC has an interest in that matter, then the HIBC has an interest in the lawsuit to protect the iwi and moepu in the cave. If the HIBC waits until after the lawsuit, and the Judge orders removal of the moepu, then it is too late. It is up to the HIBC how you align yourselves.

Saffrey says her understanding for the removal of the items, is so that all of the claimants can be afforded the opportunity to decide what happens to the objects. The iwi are not the question here- the iwi are going to stay in place. The question is the objects- should the items be returned to the Museum to afford the other claimants the opportunity to decide what happens to the objects.

Ayau says these items were obtained as the result of theft. Theft from the kupuna does not result in rights for the living. We are talking about stealing from them again. The reason Hui Malama came to the HIBC is that the HIBC is in charge of burials on this island. Hui Malama is not asking the HIBC to align with Hui Malama- the HIBC can decide that for itself.

Saffrey says it is hard to listen to criticism of the Bishop Museum. As a child she did not have her kupuna, but she had the Museum. The Museum kept these items and many others safe so that people could see the works of our ancestors.

Keolalani Hanoa this issue has been before the HIBC a long time. It has always been the HIBC's position that the items should be left in the cave. We have to honor our kupuna- it is time to teach our kamali'i how to do that. If these were your kupuna iwi, would you want them dug up?.

Joanne Kahanamoku-Sterling (Kahanamoku-Sterling) says she was brought up in the Museum. She was the Chair for the Native Hawaiian Advisory Commission to OHA. The Commission voted to support the recall of the items to Hui Malama.

Her main concern is preservation. We were not brought up to fight with each other- we were raised to protect each other.

Elarionoff asks Kahanamoku-Sterling what her definition of preservation is.

Kahanamoku-Sterling says the idea is that we need to get together and do what is proper. We need to continue the legacy of honoring our past.

La'akea Sukanuma (Sukanuma) says this particular topic is so complex. It has cultural, spiritual and legal ramifications. Sukanuma is willing to come back and make a complete presentation of the other side of this issue. The HIBC has not been told the whole story. The majority of the claimants have always supported the same position.

Kahakalau asks what position.

Sukanuma says that repatriation did not properly take place. To be fair to everyone, you need to go back to a point in time where everyone was equal. Two different NAGPRA review committees have agreed that we need to go back to that point.

Young says the HIBC does not want to set a precedent that continues the disturbance of burial sites, whether it is the first time, or second or third.

Suganuma says NAGPRA does not work for Hawaiians, because it gives ownership of the items to certain groups, when in reality the items should belong to the people.

Young says the objects are associated with iwi, and he would not necessarily agree that the items belong to the people rather than the iwi kupuna the objects are associated with.

Young asks Suganuma what his position would be if all the claimants were given the opportunity to comment on what should happen to these objects?.

Suganuma says his position would be that the wishes of our ancestors would be carried out and upheld as it has been from the very beginning.

Dela Cruz asks what are the wishes of our ancestors?.

Suganuma says that is where we differ. Suganuma knows our ancestors are with us- they see what we are doing. They have the mana to do certain things. Suganuma believes things are revealed only because there is a reason, and our ancestors allow it.

There was a point when the claimants were discussing what should happen to the items and we reached a point where we understood each other, but would never come to an agreement.

Young says he is curious to know what the positions of the other claimants are. The Council has heard from La'akea and Hui Malama, but what are the other positions?.

Kahakalau would also like to see the minutes from past HIBC meetings to see what motions were made- especially on the issue of repatriation.

Angel Pilago (Pilago) says he is recommending to the HIBC that the Council intervene in this lawsuit to protect the HIBC's purview. This is a lawsuit seeking re-opening of the repatriation process. Pilago feels that the repatriation process is completed. The Council must take action and intervene because by not getting involved it is agreeing that repatriation is incomplete.

Saffrey says there are other claimants who have not been given the opportunity to decide what happens to these items- one group decided for everyone. Saffrey can accept where the items are if all the claimants participated in the process of deciding what happened to the items.

Kahakalau says the HIBC's kuleana is protecting the iwi and moepu on this Island. Kahakalau does not know why the HIBC should be worried about the other claimants. The HIBC's concern should be for what is best for these moepu. Kahakalau feels the Council should entertain intervention.

Kanemoto says an alternative to intervention is to just recommend via a motion that the moepu should stay where they are- an affidavit can be prepared to that effect. If the

Council intervenes as a body, if there is any kind of costs or monetary damages, the Council and its members could be liable.

Pilago says the threat of liability is almost a threat- it is posturing. The threat here is the HIBC's credibility. Moepu belong to the iwi. If we disturb that process, we break that spiritual cycle.

Tyler says the HIBC has taken a position that the items be left in place undisturbed. The HIBC needs to make a decision today as a co-title owner of these items whether to intervene in this lawsuit- it is not a recommendation to the State or DLNR. Inaction is not a fulfillment of the HIBC's kuleana- don't let someone else make your decision for you. It does not matter if other claimants disagree with your position.

Mahi says it is not pono to take things from our kupuna and put them in Bishop Museum. What belongs to the kupuna is theirs forever.

Maile David (David) supports the HIBC intervening in this matter- filing an affidavit is not the same thing. David does not see how the Council members could be held personally liable at all.

Paule asks the Council to reaffirm the position it took at the September 2005 meeting- that the items be left undisturbed in the cave in Kawaihae. The item may not have been on the agenda properly for the action the Council took in September.

A motion is made to go into executive session (Elarionoff/Saffrey)

Vote: All in Favor

Executive Session begins at 355p.

The meeting is re-opened at 420p.

A motion is made to set aside the motion that the moepu in Kawaihae be left in place undisturbed made at the September 15, 2005 HIBC meeting be set aside for possible procedural inconsistencies (Kahakalau/Sherlock)

Vote: 10 ayes 1 nay (Harris) the motion carries

A motion is made that the Council file an amicus brief through the HIBC Chair to state the Council's position that the items placed in the cave in Kawaihae be left in place undisturbed and not be removed (Kahakalau/Hanoa)

Vote: 8 ayes 3 nays (Young, Elarionoff, Saffrey) the motion carries

Paule says usually an amicus brief is for an appeal. Intervention was being sought in the District Court.

Kanemoto says he has not seen any of the moving papers. Maybe the filing of the amicus brief should be deferred until the next meeting- it is not on today's agenda.

Pilago says the agenda lists intervention not filing the amicus brief. You can't change the agenda without notice- if you do, the HIBC is violating the Sunshine Law.

A motion is made to set aside the previous motion that the HIBC file an amicus brief based on procedural inconsistencies (Kahakalau/Saffrey)

Vote: All in Favor

A motion is made to defer making a determination on intervention pending clarification from the AG's office on the HIBC's standing to intervene and any potential liabilities to the HIBC (Elarionoff/Saffrey)

Vote: All in Favor

A motion is made to defer "Case Updates" (Sherlock/Harris)

Vote: All in Favor

A motion is made to adjourn the meeting (Sherlock/Harris)

Vote: All in Favor

The meeting is adjourned at 445p.